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*Attorneys for Plaintiffs Capana Swiss Advisors AG and
AmeriMark Automotive AG, and Third-Party Defendants
Shaen Bernhardt, Martin Fasser Heeg, Stefan Kammerlander,
and AmeriMark Group AG*

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

CAPANA SWISS ADVISORS AG, a Swiss
corporation; AMERIMARK
AUTOMOTIVE AG, a Swiss corporation,

Plaintiffs,

v.

RYMARK, INC., a Utah corporation;
NICHOLAS THAYNE MARKOSIAN, an
individual; JOHN KIRKLAND, an individual;
and VICKY SMALL, an individual,

Defendants.

**PLAINTIFFS' REPLY TO
DEFENDANTS' MOTION TO STRIKE
PLAINTIFFS' SUPPLEMENTAL
RESPONSE TO DEFENDANTS'
SHORT FORM DISCOVERY MOTION**

Case No. 2:23-cv-00467

Judge: Hon. Ted Stewart

Magistrate Judge: Hon. Cecilia M. Romero

Defendants have already had the opportunity to depose the Rule 30(b)(6) deponent, Shaen Bernhardt, for both AmeriMark Automotive AG and Capana Swiss Advisors AG for fourteen hours in Salt Lake City. After refusing to complete their questioning and use their allotted time, Defendants are not entitled to further depose Mr. Bernhardt (or any other AmeriMark Automotive or Capana 30(b)(6) representative)—remotely or otherwise. However, if the Court found otherwise (it should not), it is worth noting that Defendants’ Motion to Strike (ECF No. 245) is the *first time* Defendants have ever stated any “willingness to agree to a Zoom deposition” of Mr. Bernhardt. Plaintiffs write to correct the record below.

Defendants’ new claim that they are willing to continue Mr. Bernhardt’s deposition by Zoom is directly contradicted by statements made by Mr. Richards, Defendants’ counsel, *on the record* at the AmeriMark Automotive and Capana Rule 30(b)(6) depositions. At those depositions, Plaintiffs’ counsel, John Worden, made clear that he was not prohibiting Mr. Bernhardt from answering any questions other than on the basis of attorney-client privilege. *See* ECF No. 241 at 6. Mr. Worden stated on the record that Plaintiffs’ timely objections to a few topics did not preclude Defendants’ ability to ask Mr. Bernhardt questions about those topics. When Defendants still refused to complete the Rule 30(b)(6) depositions, Mr. Worden stated that Mr. Bernhardt would not return to Salt Lake City for a fourth time for a further deposition. Mr. Richards *insisted* on ending both depositions early, stating that he “will get [Mr. Bernhardt] back.” ECF No. 241 at 5. Mr. Richards made his position clear when he said: “I understand you don’t want to bring Mr. Bernhardt back. We’ll let the court decide.” *Id.* at 6.

The statements made by Mr. Richards at the AmeriMark Automotive and Capana Rule 30(b)(6) depositions are further evidence of Defendants’ ongoing harassment of Plaintiffs and transparent attempts to delay trial. These statements *directly contradict* Defendants’ statements in their Motion and warrant correction.

Dated: February 11, 2025

VENABLE LLP

/s/ John S. Worden

John S. Worden (*Admitted Pro Hac Vice*)

Sarah E. Diamond (*Admitted Pro Hac Vice*)

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AG and AmeriMark Automotive AG, and
Third-Party Defendants Shaen Bernhardt,
Martin Fasser Heeg, Stefan Kammerlander,
and AmeriMark Group AG*

CERTIFICATE OF SERVICE

I hereby certify that on **February 11, 2025**, I caused a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' SUPPLEMENTAL RESPONSE TO DEFENDANTS' SHORT FORM DISCOVERY MOTION** to be filed on CM/ECF and accordingly electronically served to the parties of record.

/s/ Sherry Smith

Sherry Smith